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Until Debt Do Us Part: The Need for Revision of Article 2364 Reimbursement Claims for Student Loan Debts

INTRODUCTION

The day that you have been waiting for your entire life is finally here. Today, you will marry your sweetheart, the love of your life, and the answer to your every prayer. Today, your \$100,000 student loan debt is the furthest thing from your mind. However, it may be the first thing on your mind if you and your spouse later file for divorce.

Your divorce is bad enough in its own right. You must decide who gets the house, the car, and custody of the children. However, you may sustain the biggest blow when you least expect it—when your spouse files a reimbursement claim to recover \$50,000 of the money that he or she “contributed” to your student loan debts.¹ Even though those loans ultimately secured the high-paying job that provided the basis for you and your spouse’s elevated standard of living, Louisiana’s community property regime makes such a claim for reimbursement possible.²

The offending legislation lies in Louisiana Civil Code article 2364, which provides a remedy for the non-debtor spouse in the event that he or she contributed to a separate debt during the marriage:

If community property has been used during the existence of the community property regime or former community property has been used thereafter to satisfy a separate obligation of a spouse, the other spouse is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used.

Considering current trends in student loan debt and marriage, it is entirely inequitable to allow one spouse to file a reimbursement claim against the other spouse to recover half of the value of the debt.³ This is primarily because the spouse claiming the reimbursement benefited from the increased standard of living during the marriage. Student loan debt is a part of most modern marriages and thus a prospective issue at divorce.⁴ Due to the lack of

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1. See discussion *infra* Part I.B.
2. See discussion *infra* Part I.B.
3. See discussion *infra* Part I.A.
4. See discussion *infra* Part I.A.

jurisprudence and specific legislation available to solve this issue, Louisiana Civil Code article 2364 must be amended to limit reimbursement claims for student loan debt, or alternatively, a jurisprudential rule must be adopted in order to ensure equity⁵ and reflect societal expectations.⁶

Part I of this Comment discusses current statistics surrounding education, marriage, and student loan debt in the United States. It also gives an overview of the fundamental aspects of community property law in Louisiana. Part II presents Louisiana's current approach to handling reimbursement claims, as well as claims specifically dealing with student loan debt.⁷ Part III explains why student loan debt should be the exception to the general rule allowing reimbursement claims. It explores the characteristics of such debt that make it different and views reimbursement claims for student loan debt through the lenses of equity and societal expectation. Finally, Part IV proposes that Louisiana must either establish a jurisprudential rule or enact legislation that limits reimbursement claims for student loan debt. Adopting these proposed solutions would ensure that Louisiana's community property laws reflect the current needs of society.

I. LOVE, MARRIAGE, AND STUDENT LOAN DEBT

The most convincing evidence of the need for change in Louisiana's treatment of student loan debt lies in statistics. People are getting married later in life,⁸ are better educated when they do marry,⁹ and many enter marriage with student loan debt.¹⁰ These characteristics of many modern marriages clash with Louisiana's community property law, demonstrating a vital need for change.

5. See discussion *infra* Part III.B.

6. See discussion *infra* Part III.C.

7. See LA. CIV. CODE art. 2358 (2014) (providing the basis for allowing reimbursement claims).

8. Sharon Jayson, *Sooner vs. Later: Is There an Ideal Age for First Marriage?*, USA TODAY, http://www.usatoday.com/news/health/2008-11-09-delayed-marriage_N.htm (last updated Nov. 9, 2008) [<http://perma.cc/8GDH-55NL>] (archived Mar. 8, 2014) (noting that the age of first marriage has been climbing steadily for all racial, ethnic, and socioeconomic groups).

9. Hanna Rosin, *The End of Men*, ATLANTIC, July/Aug. 2010, available at <http://www.theatlantic.com/magazine/print/2010/07/the-end-of-men/308135> [<http://perma.cc/6VYD-JXYR>] (archived Mar. 8, 2014).

10. See Meta Brown, Andrew Haughwout, Donghoon Lee, Maricar Mabutas & Wilbert van der Klaauw, *Grading Student Loans*, FED. RES. BANK N.Y. (Mar. 5, 2012), <http://libertystreeteconomics.newyorkfed.org/2012/03/grading-student-loans.html> [<http://perma.cc/WWH8-5UMJ>] (archived Mar. 8, 2014).

A. Societal Trends in Education and Marriage

Fifty years ago, the average American family often lived behind a metaphorical “white picket fence—one man, one woman, and [a] bunch of happy kids.”¹¹ American marriage demographics, however, have significantly changed.¹² In order to account for these changing statistics and their effect on society’s expectations of marriage, Louisiana must revise its community property laws.

The last time that Louisiana revised its law governing community property was in 1980.¹³ At that time, women were viewed as “second-class citizens,” while men dominated positions of power and influence.¹⁴ Unfortunately, Louisiana’s current matrimonial regimes law still embraces these antiquated opinions.¹⁵ In the approximately 35 years that have passed since the last revision, the role of women in society has changed immensely, bringing them out of the home and into the workplace.¹⁶ Not only have women managed to establish much more equality between the sexes, but also, in many respects, they have risen beyond the capacities of their male counterparts.¹⁷ Women dominate the

11. Rosin, *supra* note 9.

12. James R. Wetzel, *American Families: 75 Years of Change*, MONTHLY LAB. REV., Mar. 1990, at 4, 5.

Today, relatively fewer of us are living in family households, and particularly in ‘traditional’ nuclear families, than did so earlier in the 20th century. The trend toward living in nonfamily households (usually alone) is associated with . . . delayed marriage among young adults [E]conomic roles within the family have shifted significantly In particular, regardless of the presence of children, including infants, wives now are more likely to work outside the home than to work solely as homemakers.

Id.

13. See KATHERINE S. SPAHT & RICHARD D. MORENO, MATRIMONIAL REGIMES § 7:13, in 16 LOUISIANA CIVIL LAW TREATISE 562 (3d ed. 2007).

14. Rosin, *supra* note 9. See also LA. CIV. CODE art. 2404 (repealed eff. Jan. 1, 1980) (“The husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife.”).

15. In enacting article 121, the Legislature sought to protect women who supported their husbands throughout their education, only to be met with divorce after their graduations. See discussion *infra* Part II.A.

16. See generally Rosin, *supra* note 9.

17. See *id.* In fact, as of 2010, women hold a majority of the nation’s jobs, and they bring home approximately 42.2% of the household income (up from a mere 2–6% in 1970), and four in ten mothers are the primary source of income for their families. *Id.*

Women now hold 51.4% of managerial and professional jobs—up from 26.1% in 1980. They make up 54% of all accountants and hold about

campuses of colleges and professional schools, obtaining three bachelor's degrees for every two attained by men.¹⁸ In fact, men are now more likely than women to hold only a high-school diploma.¹⁹

These changing demographics are particularly significant because, though fewer people are getting married,²⁰ those who do marry are older and better educated than in the past.²¹ The time required to obtain higher education leads to a higher age of first marriage because more people are waiting to finish their college and professional education before getting married.²² The current median age for first marriage is the oldest that it has been since the Census Bureau began keeping records in the 1890s: almost 26 for women and 27 for men.²³ The connection between these educational and marital statistics demonstrates that couples entering into marriage are in a very different position than they were in the past. Observed together, these changing demographics exhibit one simple thing: Many more couples are going into marriage after obtaining higher

half of all banking and insurance jobs. About a third of America's physicians are now women, as are 45% of associates in law firms—and both those percentages are rising fast.

Id.

18. *Id.* The numbers are truly staggering—women earn 60% of all bachelor's and master's degrees, approximately 50% of all law and medical degrees, and 42% of all M.B.A.s. *Id.* Rosin additionally notes that of the 15 job categories projected to grow most in the next decade in the United States, women primarily occupy 13 of them. *Id.*

19. *Id.*

20. Stephanie Hallet, *Marriage Rate in America Drops Drastically*, HUFFINGTON POST (Dec. 14, 2011, 2:09 AM), http://www.huffingtonpost.com/2011/12/14/marriage-rates-in-america_n_1147290.html [http://perma.cc/3MN7-2RLT] (archived Mar. 8, 2014).

21. See PEW RESEARCH CTR., THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES 11 (2010), available at <http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf> [http://perma.cc/XUS9-ESNN] (archived Mar. 8, 2014). In 1960, college graduates (76%) were only slightly more likely than those who never attended college (72%) to marry. *Id.* By 2008, that gap widened significantly. Only 48% of those with a high school diploma or less were married, compared with 64% of college graduates. *Id.*

22. Betsey Stevenson & Justin Wolfers, *Marriage and Divorce: Changes and Their Driving Forces*, 21 J. ECON. PERSPECTIVES 27 (2007). See also Jayson, *supra* note 8.

23. Jayson, *supra* note 8. For comparison, in 1980, the time of the last revision of community property laws, the median age of first marriage was 24.7 for men and 22.0 for women. *Median Age at First Marriage*, PEARSON EDUC., <http://www.infoplease.com/ipa/A0005061.html> (last visited Mar. 23, 2013) [http://perma.cc/D6LV-EJ2E] (archived Mar. 8, 2014).

educational degrees and, as a result, are marrying with increasing amounts of student loan debt.²⁴

This interconnection between marriage and student loan debt is particularly important because today's society places a higher value on education than ever before.²⁵ The cost of college tuition has increased by approximately 900% since 1978.²⁶ As a result, many students are finding it necessary to pay for their higher education by taking out student loans. In fact, there are approximately 37 million student loan borrowers with debts totaling between \$902 billion and \$1 trillion.²⁷ In 2011, 46% of Louisiana college seniors had student loan debt, which averaged \$22,455.²⁸ Student loan debt is now

24. See Brown et al., *supra* note 10.

25. Society's current expectations regarding the education level required for even lower paying jobs means that being without a bachelor's degree is essentially not an option. In many circumstances, even a bachelor's degree is not considered to be a substantial accomplishment, and it certainly does not guarantee employment. See Greg Ip, *The Declining Value of Your College Degree*, WALL ST. J., <http://online.wsj.com/article/SB121623686919059307.html> (last updated July 17, 2008) [<http://perma.cc/JP3K-55FA>] (archived Mar. 8, 2014) (opining that a degree "isn't any big guarantee of employment, it's a basic requirement, a step you have to take to even be considered for many professional jobs"). Additionally, as of 2011, nearly 28% of Americans have a bachelor's degree, compared to less than 5% in 1940. See Alex Richards, *Census Data Shows Rise in College Degrees, but also in Racial Gaps in Education*, CHRON. HIGHER EDUC. (Jan. 23, 2011), <http://chronicle.com/article/Census-Data-Reveal-Rise-in/126026/> [<http://perma.cc/ZW5L-EXQ2>] (archived Mar. 8, 2014). According to the U.S. Census Bureau, workers 18 and over possessing bachelor's degrees earn an average of \$67,140 per year, while those with a high school diploma earn a mere \$35,170. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYMENT PROJECTIONS 2012–2022 tbl. 7 (2012), available at <http://www.bls.gov/news.release/pdf/ecopro.pdf> [<http://perma.cc/595U-8LK5>] (archived Mar. 8, 2014). Workers with a professional degree top the chart making an average of \$96,420 per year. *Id.*

26. Larry Doyle, *Are Student Loans an Impending Bubble? Is Higher Education a Scam?*, BENZINGA (Apr. 26, 2011, 9:00 AM), <http://www.benzinga.com/11/04/1032314/are-student-loans-an-impending-bubble-is-higher-education-a-scam> [<http://perma.cc/UU4S-FSNM>] (archived Mar. 8, 2014) (opining that since 1978, the price of tuition at U.S. colleges has increased over 900%, 650 points above inflation). Doyle put this number in perspective, noting that housing prices, the bubble that nearly burst the U.S. economy, increased only 50 points during those years. *Id.*

27. See Rohit Chopra, *Too Big to Fail: Student Debt Hits a Trillion*, CONSUMER FIN. PROTECTION BUREAU, <http://www.consumerfinance.gov/blog/too-big-to-fail-student-debt-hits-a-trillion> (last visited Sept. 23, 2012) [<http://perma.cc/3ZY-YY8Q>] (archived Mar. 8, 2014); see also Brown et al., *supra* note 10.

28. See Matthew Reed & Debbie Cochrane, *The Project on Student Loan Debt*, INST. FOR C. ACCESS & SUCCESS, <http://projectonstudentdebt.org/state-by-state-data.php> (last visited Feb. 6, 2013) [<http://perma.cc/WN5D-SS7R>] (archived Mar. 8, 2014). Additionally, on a national basis, 40% of U.S. households headed by someone 35 years old or younger have student loan debt. See Hope Yen, *Student Loan Debt Stretches to New Record Number of Households: Pew*

commonplace, and many individuals enter into marriage knowing that they or their future spouse will likely have student loan debt.²⁹

Couples marrying today differ greatly from the married couple envisaged by the revision of Louisiana's matrimonial regimes law in 1980. Compared to past couples, many of today's couples are more socially and economically equal, enter marriage at an older age, are better educated, and are much more likely to enter into the marriage carrying substantial student loan debt. Unfortunately, however, Louisiana's community property regime has yet to account for these changes.

B. The Basic Tenants of Community Property Law in Louisiana

The default legal regime governing marriage in Louisiana is a community of acquets and gains—commonly referred to as a “community property regime.”³⁰ Under this regime, the property of a married couple is classified as either separate or community.³¹ Generally, community property consists of property obtained during the marriage through the “effort, skill, or industry of either spouse” and also property obtained with community things or with a combination of community and separate things.³² Each spouse owns

Research Analysis, HUFFINGTON POST (Sept. 27, 2012, 4:06 AM), http://www.huffingtonpost.com/2012/09/26/student-loan-debt-households-record_n_1917681.html [http://perma.cc/F8AB-8RQV] (archived Mar. 8, 2014). On an individual basis, college seniors graduating in 2012 accumulated an average debt of \$25,250. *Id.*

29. See Jennifer Ludden, *Call Me Maybe When Your Student Loan Is Paid in Full*, NPR (July 16, 2012, 4:09 PM), <http://www.npr.org/2012/07/16/156736915/call-me-maybe-when-your-school-loan-is-paid-in-full> [http://perma.cc/PQE8-5N4J] (archived Mar. 8, 2014).

30. LA. CIV. CODE art. 2334 (2014) (“The legal regime of community of acquets and gains applies to spouses domiciled in this state, regardless of their domicile at the time of marriage or the place of celebration of the marriage.”).

31. See *id.* art. 2335 (“Property of married persons is either community or separate.”).

32. See *id.* art. 2338 (stating that additional classifications of community property include property donated to the spouses jointly, natural and civil fruits of community property, damages awarded for loss or injury to a thing belonging to the community, and all other property not classified by law as separate property); see generally *Cameron v. Rowland*, 40 So. 2d 1 (La. 1948) (finding that a bank account made up of deposits of rentals from realty belonging to the community of husband and wife was a community asset, though carried in wife's name); *McMichael v. McMichael*, 205 So. 2d 433 (La. 1967) (finding that husband, who earned bonuses from his industry with his employer between time that wife instituted suit for separation in 1958 and entry of judgment of divorce in October 1961, and whose bonuses formed part of his salary not considered in computation of alimony would be required to account to wife for amounts so received); *Barr v.*

an undivided one-half interest in all of the community property owned by the couple.³³ Separate property consists of property belonging to a spouse prior to the commencement of a community property regime, as well as things acquired exclusively with separate assets or with a mixture of separate and community assets where the amount of the community investment is minimal.³⁴

The law surrounding the community property regime becomes particularly interesting as it relates to debt.³⁵ As long as the community property regime continues (for the duration of the marriage), either spouse may use community funds to pay separate as well as community debts.³⁶ As such, during the existence of the regime, there is no actual need to distinguish between separate and community debts.³⁷ However, upon the termination of the community property regime, the classification of debts as community or separate can have significant consequences. One such consequence is the reimbursement claim.³⁸

Barr, 613 So. 2d 1159 (La. Ct. App. 1993) (stating that evidence supported finding that watch was community property, despite former husband's claim that watch was purchased mostly with separate property by exchanging former husband's old jewelry plus smaller amount of cash that was community property); Houghton v. Hall, 148 So. 37 (La. 1933) (stating that confusion of separate and community funds in making up consideration for purchasing property makes property purchased community property).

33. See LA. CIV. CODE art. 2336 (2014) (noting that Louisiana requires an equal division of property).

34. Robert Pascal, *Louisiana's 1978 Matrimonial Regimes Legislation*, 53 TUL. L. REV. 105, 118 (1978). See also LA. CIV. CODE art. 2341 (2014); see generally Phillips v. Wagner, 470 So. 2d 262 (La. Ct. App. 1985) (stating that 52 shares of stock in realty company that were husband's prior to his marriage were clearly his separate property); Bass v. Larche, 7 La. Ann. 104 (La. 1852) (stating that property bought by the husband during the community and paid for out of his own funds, under circumstances showing a clear intention to buy for his separate account, is exclusively his); Succession of Hemenway, 83 So. 2d 377 (La. 1955) (finding that stocks directly traceable to inheritance by decedent from his father's estate were assets of decedent's separate estate and not community property).

35. See Andrea Carroll, *The Superior Position of the Creditor in the Community Property Regime: Has the Community Become a Mere Creditor Collection Device?*, 47 SANTA CLARA L. REV. 1 (2007) (noting that a great windfall comes to the creditor whose struggling debtor marries an employed person in a community property state and creditors' rights are substantially expanded by the marriage alone).

36. Pascal, *supra* note 34, at 120.

37. *Id.*

38. See BLACK'S LAW DICTIONARY 445, 1312 (8th ed. 2004) (defining "reimbursement" as "repayment and indemnification"); see also LA. CIV. CODE art. 2358 (2014) ("A spouse may have a claim against the other spouse for reimbursement in accordance with the following Articles. A claim for reimbursement may be asserted only after termination of the community property

The purpose of a reimbursement claim is to “ultimately [lessen] the economic burden imposed upon a spouse where he pays debts for which he should not be held solely responsible.”³⁹ When community property is used to satisfy a separate obligation of one spouse, the other spouse is entitled to reimbursement for one-half of the amount used from his or her patrimony⁴⁰ to satisfy the debt at the termination of the regime.⁴¹ A claim for reimbursement may be asserted only after termination of the community property regime.⁴² Louisiana Civil Code article 2345 demonstrates that a separate obligation, such as a student loan debt acquired before marriage, may be satisfied during the marriage using community property.⁴³ In Louisiana, because all earnings are considered to be community property, separate debts are almost always going to be paid using community funds because they are paid from the spouses’ salaries.⁴⁴ Thus, if one spouse takes out loans prior to the marriage and makes the subsequent payments with community funds, the non-debtor spouse can file a reimbursement claim seeking to recover one-half of that debt at the termination of the community property regime.⁴⁵

Ultimately, separate debts are not at issue until the termination of the community property regime.⁴⁶ However, this issue is significant because approximately 41%⁴⁷ of all marriages in the

regime, unless otherwise provided by law.”); *see also* SPAHT & MORENO, *supra* note 13.

39. SPAHT & MORENO, *supra* note 13, at 561.

40. *See* A. N. YIANNOPULOUS, PROPERTY § 190, in 2 LOUISIANA CIVIL LAW TREATISE 351 (2001) (defining “patrimony” as “an economic unit consisting of the sum total of a person’s assets and liabilities”).

41. *See* LA. CIV. CODE art. 2364 (2014). Additionally, the comments following article 2358.1 expound on the reasoning behind reimbursement claims:

One-half of the community property that was used to satisfy the separate obligation of a spouse belonged to that spouse and, therefore, no reimbursement is due to him. The other half of the community property that was used belonged to the other spouse, and therefore, reimbursement is due to him.

Id. art. 2364 cmt. c.

42. *Id.* art. 2358.

43. *Id.* art. 2345.

44. Earnings are generally considered to be community property. *See generally* Paxton v. Bramlette, 228 So. 2d 161 (La. Ct. App. 1970) (holding that a wife’s salary was community income).

45. Art. 2364.

46. Pascal, *supra* note 34, at 118.

47. Dan Hurley, *Divorce Rate: It’s Not as High as You Think*, N.Y. TIMES (Apr. 19, 2005), http://www.nytimes.com/2005/04/19/health/19divo.html?_r=0 [<http://perma.cc/JA5L-KTGN>] (archived Mar. 8, 2014).

United States end in divorce.⁴⁸ As such, in light of a generation plagued with student loan debt, the laws regarding reimbursement claims must be revised.⁴⁹ Under current Louisiana law, individuals seeking the American dream—higher education, a great job, and a loving spouse—may ultimately find themselves in a nightmare divorce under the confines of article 2364.

II. THE ARTICLE 2364 DILEMMA: LOUISIANA'S CURRENT APPROACH

At first glance, Louisiana Civil Code article 2364 seems innocent enough. It allows for recovery if one spouse uses some of his or her money to pay the other spouse's debt.⁵⁰ However, its application often leads to harsh results. The text of the article itself allows no room for consideration of equity or the circumstances of a particular case.⁵¹ It provides an unwavering condition—if there is a separate debt paid with community funds, then the non-debtor spouse is entitled to reimbursement.⁵² A survey of related articles and jurisprudence affirms that Louisiana's current law provides no remedy for the unsuspecting debtor spouse who is left to pay more money for his or her student loan debt than ever imagined.

A. Article 121: A Misleading Provision

It is a common misconception that Louisiana Civil Code article 121 provides a solution for the inequity in reimbursement claims for student loan debt.⁵³ Article 121 reads as follows:

48. Of course, all marriages end (if not in divorce) at death. Reimbursement can also be sought at the death of the debtor spouse, though this is not the focus of this Comment. *See* art. 2364.

49. Mark Kantrowitz, *Who Graduates College with Six-Figure Student Loan Debt?*, FINAID, www.finaid.org/educators/20120801sixfiguredebt.pdf (last visited Oct. 27, 2012) [<http://perma.cc/D8LA-B29V>] (archived Mar. 8, 2014) (stressing that the overall number of students graduating with six-figure student loan debt is low). However, the study notes that that 36.2% of 2007–2008 law school graduates had six-figure debt. *Id.* The report also presented a startling rise in the numbers of borrowers with six-figure loan debt at both the graduate and undergraduate levels. *Id.* According to the report, in 1995–1996, the total number of graduate students with combined undergraduate and graduate debt in six figures was only 3,300. *Id.* By 1999–2000, it was 21,200. By 2003–2004, it was 51,100, and by 2007–2008, it was 70,800. *Id.* Undergraduates display what may be a similar trend. *Id.* In 1999–2000, there were no undergraduates with six-figure debt. By 2003–2004, there were 2,400, and by 2007–2008, there were 7,800. *Id.*

50. Art. 2364.

51. *Id.*

52. *Id.*

53. *Id.* art. 121.

In a proceeding for divorce or thereafter, the court may award a party a sum for his financial contributions made during the marriage to education or training of his spouse that increased the spouse's earning power, to the extent that the claimant did not benefit during the marriage from the increased earning power. The sum awarded may be in addition to a sum for support and to property received in the partition of community property.⁵⁴

It would seem that an award for one spouse's contribution to the other's education limited "to the extent that the claimant did not benefit during the marriage from the increased earning power" would solve the inequity found in article 2364.⁵⁵ However, an understanding of the legislative intent underlying article 121 shows that it is outdated.⁵⁶ The Legislature enacted this provision to deal with "the usual situation that has prompted the making of awards of this kind," involving a wife who "supported her husband through professional school, only to be divorced by him shortly after his graduation."⁵⁷ The problem that the Legislature sought to remedy is no longer a pervasive issue, as men and women stand on much more equal ground economically.⁵⁸

Further, article 121 is much too vague to solve the inequity found in article 2364. The provision does not address the issue of student loans explicitly, leaving the current state of the law in essentially the same position of uncertainty provided by article 2364. It does not distinguish separate debts from community debts

54. *Id.*

55. *Id.*

56. *Id.* cmt. c.

57. *Id.* The comments continue to explain the reasoning behind such awards:

Usually the wife has had little opportunity to share in the husband's enhanced income, and ordinarily little or no community property has accumulated to be divided between them. Thus, the only way to compensate her is by means of a monetary award akin to support, but different from support in that it is not affected by the various factors that govern such an award.

Id.

58. See discussion *supra* Part I.A; see also Dionissi Aliprantis et al., *The Growing Difference in College Attainment Between Women and Men*, FEDERAL RES. BANK CLEVELAND, <http://www.clevelandfed.org/research/commentary/2011/2011-21.cfm> (last visited Sept. 30, 2012) [<http://perma.cc/B28C-82E9>] (archived Mar. 8, 2014). Aliprantis observes that women have higher educational attainment rates across all three higher-education categories—associate's, bachelor's, and graduate degrees. *Id.* Approximately 28% of women ages 24–25 years old have attained a bachelor's degree, while only 21% of their male counterparts have done so. *Id.* Likewise, approximately 4% of females ages 24–25 have acquired a professional degree, compared with only 2–3% of their male counterparts. *Id.*

or address which spouse is responsible for them. Additionally, the wording of the article demonstrates that an award under article 121 is discretionary.⁵⁹ The injustice found in reimbursement claims for student loan debt requires a more explicit limitation.⁶⁰

Nevertheless, cases decided under article 121 are useful in analyzing whether a reimbursement claim for student loan debt should be permitted. *Hunter v. Hunter* involved a couple married for 18 years, during which time Mrs. Hunter sought a nursing degree.⁶¹ Mr. Hunter paid all of his wife's educational expenses, except for tuition, which was paid using student loans.⁶² Following their divorce, Mr. Hunter sought reimbursement for the educational expenses that he paid on behalf of his wife during the time that she was attending school.⁶³

The Louisiana Second Circuit Court of Appeal ultimately found that Mr. Hunter could not recover the money paid toward his wife's degree because he benefited from her increased income during the marriage "by an improved standard of living and an accumulation of community property."⁶⁴ Further, Mrs. Hunter's student loan debt, accounting for more than half of the educational expense, was paid within two years after she began working.⁶⁵ Essentially, Mr. Hunter received no reimbursement for his contributions to her education because the court found that he *benefited* from her education and thus indirectly from her debt.⁶⁶ Injecting the *Hunter* court's analysis into article 2364 would provide for equitable results in situations where the debt is acquired *prior* to the marriage but the spouse similarly benefited from it *during* the marriage. Unfortunately, the jurisprudence demonstrates that courts have not made such equitable considerations in cases dealing with reimbursement claims for student loan debt, even when the spouse has benefited from the result of the debt during the marriage.

59. Art. 121.

60. See discussion *infra* Part III.

61. 813 So. 2d 1106, 1107 (La. Ct. App. 2002).

62. *Id.*

63. *Id.* at 1108.

64. *Id.* at 1109. The court noted that Mrs. Hunter earned approximately \$80,000 during the period between her graduation and the parties' physical separation and that all of her earnings were deposited into the parties' joint account. *Id.* Further, in determining Mr. Hunter's benefit, the court considered several factors, including "whether the claimant expected a shared benefit when the contribution was made, the degree of detriment suffered by the claimant in making the contribution, and the magnitude of the benefit received by the other spouse." *Id.*

65. *Id.*

66. See *id.*

B. Jurisprudence Involving Reimbursement Claims Generally

Louisiana courts have been willing to consider whether the non-debtor spouse benefited from a debt acquired prior to marriage when dealing with *other* types of debt.⁶⁷ In *Parker v. Parker*, the court considered whether a non-debtor spouse had a reimbursement claim for interest on a mortgage debt.⁶⁸ The Parkers were married for approximately four years.⁶⁹ Prior to the marriage, Mrs. Parker acquired a townhouse, which was used as the family home.⁷⁰ The Parkers made 31 mortgage payments on the debt during the marriage.⁷¹ After the termination of the marriage, the parties agreed that Mr. Parker was entitled to reimbursement for one-half of the community funds used to reduce the principal portion of this debt.⁷² However, Mr. Parker asserted that he was further entitled to reimbursement for half of the community funds used to pay the interest.⁷³

The court ultimately concluded that the use of Mrs. Parker's separate residence by the community was an enjoyment of the "natural and civil fruits"⁷⁴ of the separate property.⁷⁵ Thus, payment of the interest benefited the community because it was a cost of maintaining the natural and civil fruits of this separate property for the community's use.⁷⁶ Therefore, the court concluded that the interest cost should not be included in the amount to which the other

67. *Sims v. Sims*, 677 So. 2d 663, 667 (La. Ct. App. 1996) (finding that husband was not entitled to reimbursement for half of the community funds paid to interest on mortgage where the wife's separate property had benefited the community by serving as the family home). *See also* *Hurta v. Hurta* 260 So. 2d 324, 327 (La. Ct. App. 1972) (finding that "[b]y providing his separate house as the family home, the husband dedicates its actual 'profits' . . . to the community, and that dedication produces an actual, in-pocket, dollar saving to the community in the form of the rent for another house which the community consequently does not have to expend"); *see generally* *Willis v. Willis*, 454 So. 2d 429, 431 (La. Ct. App. 1984) (finding that the interest cost on a husband's separate mortgage should not have been included in the amount to which his wife was entitled to reimbursement).

68. 517 So. 2d 264, 265 (La. Ct. App. 1987).

69. *Id.* at 264.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. LA. CIV. CODE art. 551 (2014) ("Fruits are things that are produced by or derived from another thing without diminution of its substance. . . . [N]atural fruits are products of the earth or of animals. Civil fruits are revenues derived from a thing by operation of law or by reason of a juridical act, such as rentals, interest, and certain corporate distributions.").

75. *Parker*, 517 So. 2d at 265.

76. *Id.*

spouse is entitled for reimbursement.⁷⁷ Oddly enough, though the benefit enjoyed by a non-debtor spouse as a result of the debtor spouse's student loan debt is analogous to the benefit found in cases involving mortgages, Louisiana courts have been unwilling to extend this reasoning to claims for student loan debt.

C. Jurisprudence Involving Reimbursement Claims for Student Loan Debt

Although there is a substantial amount of jurisprudence regarding reimbursement claims for student loan debt in Louisiana, there are very few cases dealing specifically with student loan debt acquired *prior* to marriage. This distinction is important because student loan debt acquired during marriage, which is considered a community obligation, is ineligible for a reimbursement claim.⁷⁸ An analysis of those cases, coupled with an understanding of the courts' reasonings in cases dealing with student loan debts acquired during the marriage, demonstrates Louisiana's desperate need to amend the current law to reflect societal expectations.

In *Katner v. Katner*, a couple brought various reimbursement claims against each other after the termination of their ten-year marriage.⁷⁹ One of these claims involved Mr. Katner's assertion that he was entitled to reimbursement for half of the amount paid toward Mrs. Katner's separate debt.⁸⁰ Prior to the marriage, Mrs. Katner had taken out student loans to fund her legal education,⁸¹ and during the marriage, the couple used community funds to satisfy the debt.⁸²

In resolving the case, the appellate court applied a strict and literal interpretation of article 2364.⁸³ It found that the trial court correctly determined that community funds were used to satisfy Mrs. Katner's separate debt, and Mr. Katner was entitled to reimbursement valued at half the amount of the community funds used to pay the debt.⁸⁴

77. *Id.*

78. See LA. CIV. CODE art. 2360 (2014) ("An obligation incurred by a spouse during the existence of a community property regime for the common interest of the spouses or for the interest of the other spouse is a community obligation.").

79. 28 So. 3d 566, 569 (La. Ct. App. 2009). See also art. 551. Because the spouses did not exclude the community property regime under article 2339, the regime was established pursuant to article 2334.

80. *Katner*, 28 So. 3d at 575.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 576.

This holding perfectly exemplifies Louisiana's current approach to student loan debt acquired prior to marriage. The court applied the literal text of article 2364 without considering the circumstances of the particular case.⁸⁵ The court failed to consider the length of the marriage, the financial contributions that Mrs. Katner made to the marriage, or the benefits that her profession provided.⁸⁶ All of these factors were directly related to the student loan debt she acquired to pursue her legal degree, and declining to consider those factors led to an inequitable result. Mr. Katner enjoyed the fruits of Mrs. Katner's legal education for almost a decade, yet he was still able to recover a significant amount of money.⁸⁷ The benefits that Mr. Katner received from Mrs. Katner's higher earning capacity were still not enough to preclude him from recovery.⁸⁸ Most people do not expect such a result after allowing their spouse to benefit from their higher earning capacity for the duration of the marriage.⁸⁹

Aside from *Katner*, the other relevant cases involve debts acquired *during* the marriage.⁹⁰ This is particularly significant because current statistics regarding the average amount of student loan debt and the age of first marriage suggest that today's betrothed couples expect their future spouses to *enter* the marriage with student loan debts.⁹¹ Current law simply does not reflect that reality.

Nevertheless, in *McConathy v. McConathy*, the Louisiana Second Circuit Court of Appeal shed some light on considerations that may be helpful in determining whether a reimbursement claim for student loan debt is appropriate.⁹² The case involved a couple seeking to partition their community property as part of their divorce

85. *Id.* at 579.

86. *Id.* at 575.

87. *Id.* at 569, 575.

88. *Id.*

89. See AM. LAW INST., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS, § 4.12 cmt. a (2002). The American Law Institute asserts that "[a]fter many years of marriage, spouses typically do not think of their separate-property assets as separate, even if they would be so classified under the technical property rules." *Id.*; *When You Say 'I Do,' Who Pays the Debt?*, BUDGETS ARE SEXY (July 15, 2012), <http://www.budgetsaresexy.com/2012/07/married-debt-who-pays> [<http://perma.cc/FY8-J6MS>] (archived Mar. 8, 2014) (noting that in asking a handful of married and non-married persons about debt obtained prior to marriage, "[a]ll of the people [she] asked stated they believe once married, all debts prior to marriage should be paid by the couple and is no longer just the responsibility of the individual debtor. It was no longer 'his debt' or 'her debt' but 'our debt.'").

90. See *McConathy v. McConathy*, 632 So. 2d 1200, 1202 (La. Ct. App. 1994); see also *Munson v. Munson*, 772 So. 2d 141, 145 (La. Ct. App. 2000).

91. See discussion *supra* Part I.A.

92. *McConathy*, 632 So. 2d at 1200.

proceedings.⁹³ Mr. and Mrs. McConathy⁹⁴ married in 1976, and shortly thereafter, Mrs. McConathy suggested that Mr. McConathy return to school to pursue a degree in elementary education.⁹⁵ While Mr. McConathy attended school, Mrs. McConathy worked full time and was the primary source of support for the family.⁹⁶ The couple ultimately separated in May of 1988, and Mr. McConathy received his degree later that year.⁹⁷

After receiving a judgment of divorce, Mrs. McConathy sought to partition the community property and subsequently requested reimbursement for her contributions to her husband's education, including both living expenses and payments toward his student loan debt.⁹⁸ The trial court granted Mrs. McConathy an award for her contribution to her husband's education under article 121 but found that his student loans comprised a community debt and therefore denied her request for reimbursement.⁹⁹

On appeal, Mrs. McConathy argued that the trial court erred in classifying her husband's student loan debt as a community debt.¹⁰⁰ In resolving the issue of the student debt, the appellate court determined that the debt was a community obligation.¹⁰¹ The court concluded that, at the time that the student loans were obtained, Mr. and Mrs. McConathy contemplated that Mr. McConathy's "pursuit of a higher education would ultimately benefit the community by increasing his earning capacity. . . [and t]herefore . . . the funds were obtained for the 'common interests of the spouses.'"¹⁰²

Likewise, the Louisiana Third Circuit Court of Appeal in *Munson v. Munson* echoed the ruling of *McConathy*, finding that student loans obtained by Mrs. Munson during her ten-year marriage were acquired in hopes that they would benefit the Munson

93. *Id.* at 1202.

94. The case, though named *McConathy v. McConathy*, consistently refers to the wife as Ms. Prestridge suggesting that, after the divorce, she chose to revert back to using her maiden name. For clarity purposes, the author will refer to her as Mrs. McConathy.

95. *McConathy*, 632 So. 2d at 1202.

96. *Id.* See also LA. CIV. CODE art. 121 (2014).

97. *McConathy*, 632 So. 2d at 1202.

98. *Id.* Mrs. McConathy requested reimbursement under article 121, which is discussed *infra* Part III.B. Though she did not seek to recover under article 2364 (as it did not go into effect until 1980), the court's reasoning is still relevant to the current analysis.

99. *Id.*

100. *Id.*

101. *Id.* See LA. CIV. CODE art. 2360 (2014) (defining a community obligation as "[a]n obligation incurred by a spouse during the existence of a community property regime for the common interest of the spouses or for the interest of the other spouse is a community obligation").

102. *McConathy*, 632 So. 2d at 1207.

family.¹⁰³ The facts in *Munson* are essentially the same as in *McConathy*: Mrs. Munson acquired two student loans during her marriage, and community funds were used to satisfy the obligation.¹⁰⁴ The *Munson* court cited *McConathy*, finding that the Munsons “anticipated that the 1991 and 1992 student loans would ultimately improve Mrs. Munson’s earning power for the community’s benefit.”¹⁰⁵

Although *McConathy* and *Munson* involve student loan debt obtained during the marriage, the same reasoning from these cases logically applies to debt obtained prior to the marriage.¹⁰⁶ In fact, both courts’ rulings precisely advocate that the same reasoning apply to debt obtained prior to the marriage.¹⁰⁷ The *McConathy* court noted that to determine whether the funds used to pay the student loan debt were beneficial to the community, an examination must be made as to the uses to which it was put.¹⁰⁸ The court decided that because Mr. McConathy obtained the loans in hopes of ultimately being a better provider for his family, the loans were acquired for the common interests of the spouses.¹⁰⁹ The classification of the debt as a community obligation is particularly interesting in light of the fact that Mr. McConathy did not even obtain his degree until after the separation.¹¹⁰ Mrs. McConathy did not even have the chance to benefit from the debt, yet the court found that it was a community obligation merely because it was *intended* to benefit the family.¹¹¹ The *Munson* court iterated similar concerns.¹¹² As such, it seems that both courts stretched the definition of a community obligation, classifying the student loan debt in a manner likely to preserve an equitable result while staying within the limited action allowed by the Civil Code.¹¹³ These results suggest that, though the courts in *Munson* and *McConathy* could

103. *Munson v. Munson*, 772 So. 2d 141, 145 (La. Ct. App. 2000).

104. *Id.*

105. *Id.*

106. *See McConathy*, 632 So. 2d at 1202; *see also Munson*, 772 So. 2d at 145.

107. *See McConathy*, 632 So. 2d at 1202; *see also Munson*, 772 So. 2d at 145.

108. *McConathy*, 632 So. 2d at 1206.

109. *Id.* at 1207.

110. *Id.* at 1202.

111. *Id.*

112. *Munson*, 772 So. 2d at 145. The *Munson* court cited *McConathy* and agreed that, in order to determine whether the debt benefited the community, the court must examine the uses to which it was put. *Id.* Ultimately, the *Munson* court characterized the student loans as community property and found that the Munsons “anticipated that the . . . student loans would ultimately improve Mrs. Munson’s earning power for the community’s benefit.” *Id.*

113. *McConathy*, 632 So. 2d at 1207. *See also Munson*, 772 So. 2d at 145; LA. CIV. CODE art. 2364 (2014).

have classified the student loan debt as separate, they did not do so to avoid allowing the claimant–spouses to obtain reimbursement.

The facts in *Katner*, dealing with a student loan debt acquired before marriage, parallel those of *McConathy* and *Munson*, with the exception of the time when the loan was obtained.¹¹⁴ As the law currently stands, the timing of the debt changes *everything*. Because regardless of the temporal element, couples anticipate benefiting from the opportunities allowed by the student loan debt, there is no logical reason to make different considerations when dealing with student loan debt acquired prior to the marriage and student loan debt acquired during the marriage. The Legislature’s fascination with the temporal connection between the student loan debt and the marriage does not reflect the societal expectations exhibited by current developments in marriage and education.¹¹⁵ As such, a sharp distinction must be drawn between student loan debt and other kinds of debt.

III. STUDENT LOAN DEBT AS THE EXCEPTION: A PUBLIC POLICY ANALYSIS

Above all else, the law should reflect what reasonable people would realistically expect it to be.¹¹⁶ Society evolves, and consequently, some laws must be periodically reconsidered to accommodate societal change. Today’s married couples would *not* realistically expect to be blindsided by a reimbursement claim for money contributed toward a student loan debt that both agreed would be beneficial to their life together.¹¹⁷ This peculiarity suggests that student loan debt is not like other types of debt and needs directed regulation. Additionally, as a matter of public policy, people would not envision that the law allows an unjust double, or even triple, recovery, particularly in light of an event as traumatic as

114. *Katner v. Katner*, 28 So. 3d 566, 575 (La. Ct. App. 2009).

115. See discussion *supra* Part I.

116. Elizabeth Cook, *Laws Should Reflect ‘Reality of Modern Society’*, POLITICSHOME (Nov. 9, 2009), <http://centrallobby.politicshome.com/latestnews/article-detail/newsarticle/laws-should-reflect-reality-of-modern-society/> [<http://perma.cc/5RN2-7UDK>] (archived Mar. 8, 2014) (noting that it is “vital that the legal rules remain relevant and up-to-date, reflecting the reality of modern society and the reasonable expectations of those who have been bereaved”); *Law Reforms Should Reflect Changes in Society*, HINDU (Feb. 5, 2011), <http://www.thehindu.com/news/cities/Hyderabad/law-reforms-should-reflect-changes-in-society/article1156903.ece> [<http://perma.cc/Z4GL-MHQU>] (archived Mar. 8, 2014) (opining that “reforms in law should be in tune with the changing socio-economic conditions of society”).

117. AM. LAW INST., *supra* note 89; *When You Say ‘I Do,’ Who Pays the Debt?*, *supra* note 89.

divorce.¹¹⁸ Louisiana's current law does not comprehend these realities and must be revised to limit reimbursement claims for student loan debt.

A. Student Loan Debt Does Not Fit Into the Mold of Other Debt

This Comment does not suggest that Louisiana law should exempt all debt from the possibility of a reimbursement claim. In fact, with most kinds of debt, providing the opportunity to file a reimbursement claim is completely equitable. For example, consider a situation in which one spouse purchases a home prior to the commencement of marriage and portions of the other spouse's wages are used to pay off the mortgage on that house. After divorce, the non-debtor spouse no longer receives any benefit from contributing to the purchase of that home. In this scenario, a reimbursement claim is an equitable remedy. However, the characteristics that make a reimbursement claim equitable under these and similar circumstances are not reflected in student loan debt.

Student loan debt is different from other types of debt because most states, including Louisiana, do not recognize educational degrees as property, asserting that a degree does not have "the characteristics of 'property' as defined in a legal context."¹¹⁹ Rather, courts consider a degree to be merely "a formal recognition of an individual's competency and skill."¹²⁰ Moreover, most courts do not view educational degrees as property because of the inherent difficulty found in calculating the value of a degree.¹²¹ This classification has particular significance in a community property state because if treated as property, a degree would likely be considered to be community property and would thus be subject to a division of its value at the termination of the community property regime.¹²²

Valuing a degree would require contemplation of factors such as which university the individual attended, how well he or she performed in school, what the current job market is in his or her particular field and locale, and how he or she used the degree. As such, Louisiana has remained steadfast in its refusal to recognize a degree as property, and its reasoning for this choice provides a

118. See discussion *infra* Part III.B.

119. Gessner v. Gessner, 614 So. 2d 307, 309 (La. Ct. App. 1993).

120. *Id.*

121. *Id.* (noting that the definition of property in Louisiana "cannot be so extended and distorted to include within that definition a professional degree and license"). See also Franklin v. Franklin, 155 P.2d 637, 641 (Cal. Ct. App. 1945).

122. See LA. CIV. CODE art. 2336 (2014).

sound basis for simultaneously distinguishing student loan debt from other types of debt as they pertain to reimbursement claims.¹²³ Louisiana courts do not consider degrees as property because doing so would lead to confusing, inconsistent, and likely unfair results.¹²⁴ In the same vein, allowing reimbursement for one-half of the funds paid to satisfy student loan debt in the wake of the divorce may lead to perplexing and inequitable outcomes.

B. The Law Should Not Encourage Inequitable Recovery

Though student loan debt does not fit into the mold of other debts susceptible to reimbursement claims under article 2364, there is another, more important reason that student loan debt should be exempt from reimbursement claims: The law should not encourage inequitable recovery.¹²⁵

Traditionally, the civil law views equity strictly as a means to fill gaps in the Code when the law is silent on an issue.¹²⁶ Louisiana Civil Code article 21 originally read as follows:

In all civil matters, *where there is no express law*, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.¹²⁷

123. *Gessner*, 614 So. 2d at 309.

124. For example, in some instances one might attend a prestigious school, yet never use his or her degree for what it was intended. In other cases, one might graduate from an unranked two-year college, yet might use the degree he or she obtained to its highest capacity. It would be difficult to reconcile these cases to achieve equitable results.

125. See LA. CIV. CODE art. 2055 (2014) (defining “equity” as the principle that “no one is allowed to take unfair advantage of another and that no one is allowed to enrich himself unjustly at the expense of another”); see also *Kennard v. Kennard*, 747 So. 2d 628, 632 (La. Ct. App. 1999) (noting that the trial court’s decision to allow a reimbursement claim because “[o]nce [the trial court] stated that issue of reimbursement for educational contribution to wife had been stipulated to be \$13,000 and ‘taken care of’ in community property partition, the court could not award [husband] an additional \$13,000 as reimbursement for educational contributions To do so would thwart efforts between the parties to settle their community disputes, and . . . it would give [husband] the benefit of an unlawful double recovery.”).

126. LA. CIV. CODE art. 4 (2014).

127. LA. CIV. CODE art. 21 (1870) (emphasis added). See generally Mitchell Franklin, *Equity in Louisiana: The Role of Article 21*, 9 TUL. L. REV. 485 (1935). Though the substance of article 21 now resides in article 4 and no longer maintains the precise wording of the previous article, the revision comments make it clear that the revision did not change the law.

Thus, the Civil Code is meant to be equitable on its face, allowing the judge discretion only when the Code explicitly grants it or when the law is silent on an issue.¹²⁸ Because the Code essentially allows judicial discretion as a final resort, it is important to ensure that the default law reflects such equity. Unfortunately, the law governing reimbursement claims is *not* equitable on its face, and thus it would be prudent for Louisiana to follow in the footsteps of other community property states in drafting specific legislation to expressly include equity in the method that courts use to award reimbursement claims for student loan debt.¹²⁹

Reimbursement claims for student loan debt are inequitable in their own right because they allow the non-debtor spouse to enjoy both the benefit of the opportunities allowed by the debt *and* recovery of half the amount contributed to it. However, this inequity is severely compounded when considered alongside the additional claims that the non-debtor spouse may have that are likewise associated with the debtor spouse's attempt to obtain higher education.

The first additional claim that the non-debtor spouse may have against the debtor spouse is for spousal support.¹³⁰ There are two kinds of spousal support in Louisiana: interim periodic support and final periodic support.¹³¹ Though neither is guaranteed, Louisiana Civil Code article 116 suggests that interim spousal support cannot be waived. Both types of spousal support involve a consideration of the spouse's ability to pay, which is directly correlative to the higher earning capacity received in large part because of the education paid

128. Art. 4.

129. See discussion *infra* Part IV.B.

130. LA. CIV. CODE art. 111 (2014).

131. See *id.* In Louisiana, spousal support is granted "in proportion to the wants of the person requiring it, and the circumstances of those who are to pay it." *Id.* art. 231. Additionally, though neither is guaranteed, interim spousal support *cannot* be waived. See *id.* art. 116 ("The obligation of final spousal support may be modified, waived, or extinguished by judgment of a court of competent jurisdiction or by authentic act or act under private signature duly acknowledged by the obligee."). There is no similar article allowing for a waiver of interim spousal support. The generally accepted notion is that, unlike interim support, final support is not a matter of public order about which couples are forbidden to contract under article 7. See generally *McAlpine v. McAlpine*, 679 So. 2d 85 (La. 1996); see also LA. CIV. CODE art. 113 (2014) (noting that interim support terminates upon the rendition of a judgment awarding or denying final spousal support, though it can continue for an additional period of 180 days after a judgment of divorce and even longer with good cause). In determining whether interim spousal support is appropriate, the court considers the needs of the claimant, the ability of the other spouse to pay, and the standard of living that the couple enjoyed for the duration of their marriage. *Id.*

for by the student loan.¹³² Further, some courts have been quite liberal with their awards of spousal support in the past, taking into account the spouse's potential earning capacity when considering the limit on the award.¹³³ This fact is particularly relevant to the issue of student loan debt because pursuing higher education increases an individual's earning power, though conceivably he or she may not decide to pursue that power to its full capacity.¹³⁴ Perhaps a spouse attends law school but decides that his or her talents are better suited for public interest work than for being a litigator in a high-powered firm. His or her salary is a far cry from the potential earning capacity resulting from working for a large firm.¹³⁵ The court could consider that unfulfilled earning potential in awarding spousal support.¹³⁶ The inequity in these circumstances lies in the fact that current law essentially allows non-debtor spouses the opportunity to have their cake and eat it too. The non-debtor spouse is repaid for his or her contribution to a separate obligation that aided in funding the lifestyle to which the couple became accustomed during the marriage, but he or she is also awarded spousal support based on the debtor spouse's income, which is

132. Art. 113 (noting that "the court may award a party an interim spousal support allowance based on the needs of that party, the ability of the other party to pay, and the standard of living of the parties during the marriage").

133. See *Moore v. Moore*, 866 So. 2d 910, 917 (La. Ct. App. 2004). The *Moore* court's reasoning was as follows:

Christopher has a significant earning capacity. In addition to his experience as a financial planner, he now has worldwide certification as a soccer coach. Christopher makes the assertion that the \$700.00 per month award exceeds one-third of his net income. We find the record unclear as to Christopher's exact net income. There was enough testimony to establish that Christopher receives \$1,700.00 per monthly salary plus an additional \$300.00 per week for playing soccer and that he has substantially larger earning capacity. We, therefore, affirm the \$700.00 award of spousal support.

Id.; see also *Roan v. Roan*, 870 So. 2d 626, 635 (La. Ct. App. 2004). In *Roan v. Roan*, Mr. Roan, a 70-year-old man, sought to lower the alimony payments to his ex-wife after he retired, arguing that his income was substantially less. *Id.* The court agreed with the trial court's finding that "although Mr. Roan was 70 years old at the time of judgment, he was a vigorous man capable of continuing to work" and affirmed the original spousal support amount. *Id.*

134. See BUREAU OF LABOR STATISTICS, *supra* note 25.

135. See Lisa Faye Petak, *Young Lawyers Turn to Public Service*, N.Y. TIMES, Aug. 20, 2010, at A14, available at http://www.nytimes.com/2010/08/20/us/20defer.html?_r=0 [<http://perma.cc/84P3-HCGU>] (archived Mar. 8, 2014) (noting that the pay gap between public interest and private firm work is "steep": Public interest attorneys generally start at, on average, \$35,000 to \$39,000 a year versus \$140,000 to \$150,000 with a large firm).

136. *Moore*, 866 So. 2d at 917.

statistically higher than it would have been without the student loans.¹³⁷

Unfortunately, the debtor spouse's troubles may not end with the combination of spousal support and reimbursement claims. Suppose that one spouse takes out a student loan sufficient to cover the cost of tuition and textbooks but additionally relies on the non-debtor spouse to provide basic living expenses while the debtor spouse is attending school. Depending on the circumstances, the non-debtor spouse may also have a second, additional claim against the debtor spouse under article 121, although awards under this provision are limited to the extent that the spouse did not benefit during the marriage from the increased earning power.¹³⁸ Thus, if the couple has not been married long enough for the non-debtor spouse to enjoy the fruits of the debtor spouse's labor, the non-debtor spouse can also recover any contribution that he or she made to the debtor spouse's education.¹³⁹ The non-debtor spouse in such a situation could theoretically demand reimbursement for payments toward the student loan debts, reimbursement for his or her financial contribution to the couple's living expenses, and spousal support.¹⁴⁰

Ultimately, a reimbursement claim for funds contributed to student loan debt obtained prior to the marriage allows inequitable recovery on its own. However, that injustice is magnified when considered alongside the additional claims that a spouse could potentially file.¹⁴¹ Under the current law, Louisiana is promoting a system that allows bitter spouses to recover not once, but possibly *three* times in a situation where the spouse has already benefited greatly from the opportunities made possible by the debt.

137. According to the U.S. Census Bureau, workers 18 and over possessing bachelor's degrees earn an average of \$54,756 per year, while those with a high school diploma earn a mere \$33,176. See BUREAU OF LABOR STATISTICS, *supra* note 25. Workers with a professional degree top the chart making an average of \$86,580 per year. *Id.*

138. See discussion *supra* Part II.A.

139. See LA. CIV. CODE art. 121 (2014).

140. *Id.* cmt. d ("Financial contributions' include direct educational or training expenses paid by the claimant for the other spouse—such as tuition, books, and school fees. The term also includes financial contributions made to satisfy the living expenses of the supported spouse."). See *generally* DeLa Rosa v. DeLa Rosa, 309 N.W.2d 755 (Minn. 1981); Reiss v. Reiss, 478 A.2d 441 (N.J. Ch. 1984).

141. As previously mentioned, the spouse could have a claim for spousal support under article 111 or a claim for contribution under article 121.

C. The Law Should Reflect Reasonable Societal Expectations

The most compelling reason for limiting reimbursement claims for student loan debt is a simple matter of public policy. In taking out loans and getting married, most people are likely not aware that they could be responsible for a significantly larger amount of money than they borrowed.¹⁴² As previously mentioned, couples today stand on quite different ground than they did 40 years ago.¹⁴³ Those differences are mirrored in the process of courtship. Today, two-thirds of couples live together before marriage.¹⁴⁴ Living with an individual gives exposure to his or her financial responsibilities, and even if a couple doesn't cohabitate, couples likely discuss finances before committing to marriage.¹⁴⁵ Thus, it is not likely that student loan debt comes as a surprise to prospective newlyweds.

However, it *is* likely that many people would be shocked to learn that their spouse could reclaim half of the community money paid toward their student loan debt, particularly when this debt ultimately contributed to the couple's standard of living and quality of life.¹⁴⁶ Most people would probably assume that contributing community funds to student loan debt is more like contributing community funds to pay a utility bill—both spouses share the benefit of what is obtained, and thus they must share the debt. In the case of student loans, both spouses share the benefit that the higher education provides. If both spouses agree to share these benefits, they likely also agree to share the expenses that are necessary to enjoy them. Such an expectation is entirely reasonable, yet Louisiana's current law does not embody that notion. Instead, it

142. This is particularly true for individuals who do not have access to a legal education or the advice of an attorney.

143. See discussion *supra* Part I.A.

144. Leslie Mann, *Cohabiting Happily Ever After*, CHI. TRIBUNE (May 9, 2012), http://articles.chicagotribune.com/2012-05-09/news/ct-x-living-together-20120509_1_cohabiting-premarital-education-couples [<http://perma.cc/GVS2-CBWT>] (archived Mar. 8, 2014). See also U.S. CENSUS BUREAU, TABLE UC-1. UNMARRIED COUPLES OF THE OPPOSITE SEX, BY PRESENCE OF CHILDREN: 1960 TO PRESENT (2014), available at <https://www.census.gov/hhes/families/files/uc1.xls> [<http://perma.cc/SGG7-8T6L>] (archived Mar. 8, 2014). In 1960, approximately 439,000 American couples cohabitated before marriage. *Id.* In 2000, that number increased to 4.9 million. *Id.* Today, approximately 8 million people choose to cohabitate before marriage. *Id.*

145. Ludden, *supra* note 29.

146. See AM. LAW INST., *supra* note 89, § 4.12 cmt. a. The American Law Institute asserts that “[a]fter many years of marriage, spouses typically do not think of their separate-property assets as separate, even if they would be so classified under the technical property rules.” *Id.*

provides a means for angry spouses to demand recovery, allowing them to have their cake and eat it too.

IV. NON-DEBTOR SPOUSES CANNOT HAVE THEIR CAKE AND EAT IT TOO

The current law surrounding reimbursement claims for student loan debt is ripe for revision. Of course, a couple can compose a prenuptial agreement waiving the right to reimbursement; however, spouses who do not have the benefit of a legal education or the advice of counsel would likely not be aware of the consequences of not having a prenuptial agreement.¹⁴⁷ Further, even if a couple *is* aware and understands the consequences, they still might decline to draft a prenuptial agreement because of the emotional and trust issues that are attached to such agreements.¹⁴⁸ In fact, very few married or engaged individuals have a prenuptial agreement, demonstrating that this is probably not a realistic solution to the student loan debt problem in Louisiana.¹⁴⁹

There are two possible ways to solve the inequity that results from allowing reimbursement claims for student loan debt. The first solution is a judicial one—one in which the court applies the reasoning used by the court in *Parker*, which dealt with payments made during the marriage on a home acquired prior to the marriage.¹⁵⁰ The second and best solution is to draft additional legislation to preempt the problem altogether by substantially limiting the extent to which the non-debtor spouse is awarded reimbursement for student loan debt payments. This approach may be achieved by looking to laws implemented in other community property states for guidance.

147. Though there is a presumption that things acquired during the marriage are community, couples can contract out of the community property regime. See LA. CIV. CODE art. 2340 (2014).

148. Carlin Flora, *Let's Make a Deal*, PSYCHOLOGY TODAY (Nov. 1, 2004), <http://www.psychologytoday.com/articles/200411/lets-make-deal> [<http://perma.cc/9UW9-TL7C>] (archived Mar. 8, 2014).

149. See Laura Petrecca, *Prenuptial Agreements: Unromantic, but Important*, USA TODAY, http://www.usatoday.com/money/perfi/basics/2010-03-08-prenups-08_CV_N.htm (last updated Mar. 11, 2010) [<http://perma.cc/GNC8-2VQ8>] (archived Mar. 8, 2014).

150. *Parker v. Parker*, 517 So. 2d 264, 265 (La. Ct. App. 1987). See also discussion *supra* accompanying note 68.

A. Judicial Solution: Applying the Reasoning of Parker v. Parker

In *Parker*, the court focused on the notion that, although the interest on the mortgage loan resulted from a separate obligation, the non-debtor spouse was *not* entitled to reimbursement of the interest because he benefited from the use of the property.¹⁵¹ Louisiana's courts should apply similar logic in analyzing reimbursement claims for student loan debts, primarily because the same focus can be applied by analogy to such claims.

The court in *Parker* noted that the community's use of the separate property was "an enjoyment of the 'natural and civil fruits' of the separate property" and that the "cost of the benefit to the community included the payment of interest."¹⁵² Although it is true that a degree is not considered property in Louisiana,¹⁵³ the courts' focus in mortgage cases is not on the *property* but on the *enjoyment and use* of the thing.¹⁵⁴ In fact, by allowing the community to use the separate property, the debtor spouse kept the community from having the expense of rent for another house.¹⁵⁵ The result is that the community ultimately had more capital than it otherwise would have had.¹⁵⁶ Similarly, the debtor spouse's student loan provides him or her with the opportunity to earn more money and thus that separate debt eventually leads to the community obtaining more money than it would have had.¹⁵⁷ In both cases, the community (and therefore the non-debtor spouse) gets the benefits of the revenue gained as a result of the debtor spouse's increased earning capacity resulting from the education he or she acquired with debts.

Thus, one solution to the inequity in allowing reimbursement claims for student loan debt is for courts to apply by analogy the "consideration of benefit" logic to circumstances in which student loan debt is acquired prior to marriage. Doing so would establish a jurisprudential rule that student loan debt benefits the community as the business cost of maintaining and using the civil fruits of the separate property, and as such the non-debtor spouse is not entitled to reimbursement. Though such a solution would certainly lessen the inequity in allowing reimbursement claims for student loan debt, it still leaves room for inconsistent results if left strictly to the discretion of the judiciary.

151. See discussion *supra* Part III.A.

152. *Parker*, 517 So. 2d at 265.

153. *Gessner v. Gessner*, 614 So. 2d 307, 309 (La. Ct. App. 1993).

154. See discussion *supra* accompanying note 68.

155. See *Hurta v. Hurta*, 260 So. 2d 324, 327 (La. Ct. App. 1972).

156. *Id.*

157. See BUREAU OF LABOR STATISTICS, *supra* note 25.

B. A Legislative Proposal

Drafting new legislation that expressly deals with the issue of student loan debt would likely be the most effective resolution to the reimbursement claim dilemma. New legislation would provide more consistent results and accurately reflect both equity and societal expectations regarding marriage and student loan debt.¹⁵⁸ Several other community property states provide legislation that either deals specifically with the issue of student loan debt or at least codifies equitable considerations.¹⁵⁹ The most insightful legislation comes from Texas and California after which the Louisiana Legislature should model an amendment to article 2364.¹⁶⁰

1. Using Texas as a Model for Revision

Texas's pertinent law focuses entirely on equity, a principle that seems lost on Louisiana's Legislature with regard to reimbursement claims. Under section 7.007 of the Texas Family Code, the court "shall apply equitable principles" to "determine whether to recognize the claim [for reimbursement] after taking into account all the relative circumstances of the spouses" and to "order a division of the claim for reimbursement, if appropriate, in a manner that the court

158. See discussion *supra* Part III.B–C.

159. See TEX. FAM. CODE ANN. § 7.007 (West 2006); see also CAL. FAM. CODE § 2641 (West 2004).

160. Some community property states use a system of equitable distribution, and others employ a system of equal division. WILLIAM A. REPPY, JR. & CYNTHIA A. SAMUEL, COMMUNITY PROPERTY IN THE UNITED STATES 476 (2004). In an equitable distribution system, both spouses are entitled to their fair share of the profits of the marriage, allowing for the possibility of unequal division. BRETT R. TURNER, EQUITABLE DISTRIBUTION OF PROPERTY § 1:1 (3d ed. 2011). Further, equitable distribution applies only in cases of divorce. Equal division focuses on an equivalent division of the assets. See REPPY & SAMUEL, *supra*, at 476. Additionally, equal division controls property ownership for the duration of the marriage, as well as property distribution at death and divorce. *Id.* The most important distinction between the systems lies in their uses of judicial discretion. *Id.* Equitable distribution implies a large amount of discretion—the court divides the couple's assets according to general community property laws but can make additional equitable considerations. *Id.* In an equal division state like Louisiana, there is little room for equitable considerations by the judge if they are not written into the law itself. *Id.* Though Texas law fits under the system of equitable distribution, the considerations that it employs in determining whether to award reimbursement are nevertheless helpful to achieve equitable and just results and are therefore relevant considerations in revising Louisiana law.

considers just and right, having due regard for the rights of each party and any children of the marriage.”¹⁶¹

Under this provision, the Texas Legislature suggests that different debts should be treated differently, depending upon the circumstances in which they are acquired. The Louisiana Legislature should take note of Texas’s careful consideration of equitable principles in light of the circumstances of a particular case. Doing so would allow for reimbursement claims where appropriate but forbid applying the blanket provision of the current version of article 2364 in cases where the non-debtor spouse benefited from the opportunities resulting from the debt to the extent that allowing reimbursement would be unjust. Though the community property system employed by Texas, giving judges a great deal of discretion, differs somewhat from the system used in Louisiana, it is nonetheless a useful model for dealing with the issue of student loan debt.¹⁶²

2. Using California as a Model for Revision

While Texas’s law provides some guidance as to the reimbursement claim issue, California’s Family Code provides the best solution to the inequity caused by allowing reimbursement for student loan debt in a context that fits squarely within the community property system applied in Louisiana. Like Louisiana, California employs a system of equal division, meaning that at the end of the community property regime, each spouse is a co-owner of one-half of the community assets.¹⁶³ Section 2641 of the California Family Code deals directly with community contributions to education.¹⁶⁴ The provision, in pertinent part, reads as follows:

The community shall be reimbursed for community contributions to education or training of a party that substantially enhances the earning capacity of the party The reimbursement and assignment required by this section shall be reduced or modified to the extent circumstances render such a disposition unjust, including, but not limited to, any of the following:

The community has substantially benefited from the education, training, or loan incurred for the education or

161. TEX. FAM. CODE §§ 7.007, 3.402 (describing reimbursement claims generally) (2006).

162. See discussion *supra* note 160.

163. See discussion *supra* note 160.

164. CAL. FAM. CODE § 2641.

training of the party. There is a rebuttable presumption, affecting the burden of proof, that the community has not substantially benefited from community contributions to the education or training made less than 10 years before the commencement of the proceeding, and that the community has substantially benefited from community contributions to the education or training made more than 10 years before the commencement of the proceeding.

The education or training received by the party is offset by the education or training received by the other party for which community contributions have been made¹⁶⁵

Essentially, under California law, a non-debtor spouse is allowed to file a reimbursement claim against the debtor spouse for funds contributed to a separate student loan debt; however, the ability to receive the award is limited to the extent that both spouses have benefited from the opportunities allowed by the debt.¹⁶⁶ This provision demonstrates that California's Legislature emphasizes the duration of the marriage, providing a rebuttable presumption that the spouses did not benefit from the community contribution to the debt if it was made less than ten years before the termination of the community property regime.¹⁶⁷

The text of the provision prohibits reimbursement when reimbursement would render an unjust disposition.¹⁶⁸ Though the basic rule is that community contributions must be reimbursed, that right is limited to contributions made during the preceding ten years "to minimize . . . potential inequity."¹⁶⁹ The California Legislature's revision comments make it clear that its focus is not on whether the debt was obtained as a separate or community debt, but rather whether the community ultimately benefited from the debt:

[I]f one party receives a[n] . . . education, degree, and license at community expense, but the marriage endures for some time with a high standard of living and substantial accumulation of community assets attributable to the . . . training, it may be inappropriate to require reimbursement.¹⁷⁰

165. *Id.* (emphasis added).

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* law revision commission cmts.

170. *Id.*

This situation is exactly the kind that Louisiana law has failed to account for and perfectly exemplifies the need to revise the current law.

3. A Practical Solution

Louisiana Civil Code article 2364 should be revised to instill equity and societal expectations into the law dealing with reimbursement claims for student loan debt. The revision of article 2364 must take into account the increased earning capacity of the debtor spouse that occurs almost solely as a result of the student loan debt, as well as the higher standard of living and the accumulation of community assets attributable to that higher earning potential.¹⁷¹ To do so, the Louisiana Legislature should consider drafting a revision of Article 2364 that reads as follows:

Art. 2364. Satisfaction of separate obligation with community property or former community property

If community property has been used during the existence of the community property regime or former community property has been used thereafter to satisfy a separate obligation of a spouse, the other spouse is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used.

*Nevertheless, the reimbursement required by this article shall be reduced, modified, or extinguished to the extent such circumstances render a disposition unjust, such as situations in which the community has substantially benefited from the education, training, or debt incurred for the education or training of the party.*¹⁷²

By forcing courts to consider whether the community benefited from the debtor spouse's acquisition of the debt, the Legislature would solve the inequities that exist in the present version of article 2364 and better conform to today's social realities of student loan debt and marriage.¹⁷³ Defining a "substantial benefit" would be left to the courts and would ideally focus on the duration of the marriage, the impact the

171. In fact, under the California provision, the revision comments note that the consideration of a higher earning capacity does not require "that the party actually work in an occupation to which the enhancement applies." *See id.*

172. The italicized portion designates the changes to article 2364 proposed by the author.

173. *See* discussion *supra* Part I.A.

acquisition of the debt ultimately had on the debtor spouse's earning capacity, and the couple's standard of living during the marriage.

This Comment's proposed version of article 2364 exemplifies precisely what the article was undoubtedly aiming to accomplish but failed to achieve: an article based in equity.¹⁷⁴ The proposed revision would not eliminate reimbursement claims for student loan debt entirely. Rather, the revision would allow such claims when the marriage was of such short duration that the non-debtor spouse had no chance to enjoy the benefit of the debtor spouse's increased earning capacity. However, the revision would also protect debtor spouses from essentially paying their loan debt one-and-a-half times in situations where their spouses enjoyed the fruits of the debt. Additionally, the Legislature should choose to adopt other characteristics of California's statute should it prefer more concrete parameters for reimbursement claims.¹⁷⁵ Such a provision provides balanced, equitable results while accurately portraying what society would expect when entering into a marriage in which one or both spouses have student loan debt.

CONCLUSION

Under current Louisiana Civil Code article 2364, a prospective spouse with student loan debt should exercise a bit more caution when considering that walk down the aisle. Under the current law, bitter ex-spouses can demand repayment of half the value of the payments made toward their spouse's student loan debt, despite the fact that they may have enjoyed numerous advantages as a result of the loan. Moreover, an angry spouse could potentially be allowed double, or even triple, recovery in the wake of a nasty divorce.

Though a plethora of problems may arise as a result of reimbursement claims, the most daunting issue is the high level of inequity that generally occurs as a result. As such, Louisiana must remedy this injustice, either jurisprudentially or, preferably, legislatively. Doing so would be consistent with Louisiana's aim to achieve equity and would remove a non-debtor spouse's ability to

174. See LA. CIV. CODE art. 2055 (2014) (defining "equity" as the principle that "no one is allowed to take unfair advantage of another and that no one is allowed to enrich himself unjustly at the expense of another").

175. For example, Louisiana's Legislature might choose to adopt presumptions similar to those implemented by California. See CAL. FAM. CODE § 2641 (West 2004). The presumption maintains the equity standard because it allows the non-debtor spouse to at least have that presumption in his favor. However, it still remains equitable to the debtor spouse because, practically speaking, the presumption will likely not be difficult to overcome when the non-debtor spouse has enjoyed a higher standard of living and countless benefits as a result of the debtor spouse's higher income.

recover funds contributed to student loan debts acquired prior to the marriage to the extent that he or she benefited from those loans through an increased standard of living. The end result is two-fold: law that reflects both the preservation of equity and the normal expectations of society.

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